

STATE OF VERMONT
PUBLIC SERVICE BOARD

Docket No. 7478

Joint petition of Dalton Hydro LLC to sell, and)
Ampersand Gilman Energy, LLC, to own and operate, a)
hydroelectric generating facility located at the Gilman)
Dam in the Town of Gilman, Vermont)

Order entered: 12/4/2008

ORDER GRANTING CERTIFICATE OF CONSENT
AND CERTIFICATE OF PUBLIC GOOD

I. INTRODUCTION

On August 22, 2008, Dalton Hydro LLC ("Dalton") and Ampersand Gilman Energy, LLC ("Ampersand") filed a petition with the Vermont Public Service Board ("Board") for a certificate of consent, pursuant to 30 V.S.A. § 109, for Dalton to sell to Ampersand Federal Energy Regulatory Commission ("FERC") Hydroelectric Project 2392 ("Project"), along with an adjacent paper mill at which a steam generating facility is located. The petition further requests that the Board issue a certificate of public good, pursuant to 30 V.S.A. § 231 ("CPG"), to Ampersand, Ampersand Gilman Hydro LP ("Hydro"), Ampersand Gilman Biomass LLC ("Biomass") and Ampersand Gilman Site Optimization LLC ("Optimization") to acquire, own and operate the Project, and for *de minimis* regulation.¹ This docket was opened in response to that petition.

On October 28, 2008, the Vermont Department of Public Service ("Department") filed a letter with the Board recommending that the proposed transfer be approved without investigation or hearing.

1. The petitioners did not specify what they meant by *de minimis* regulation. In this Order, we have included those conditions that we have determined to be appropriate under the circumstances. If the petitioners seek other conditions, they may file a motion to amend.

On October 29, 2008, Central Vermont Public Service Corporation ("CVPS") filed a letter with the Board stating that it supports the transfer of the Project from Dalton to Ampersand. CVPS further stated that, upon Ampersand's receipt of all regulatory approvals and completion of all actions necessary to own and operate the Project, CVPS will agree to the assignment to Ampersand of the current Power Purchase and Interconnection Agreements between Dalton and CVPS.²

On November 4, 2008, counsel for Dalton filed with the Board a copy of the FERC Order issued October 30, 2008, approving the transfer of the FERC license for the Project from Dalton to Ampersand.

No party has objected to Board consideration of any submissions made in connection with this docket. Therefore, we hereby admit the following items as evidence in this proceeding:

1. The Petition for Consent to Sell and Petition to Own and Operate Electric Generating Facilities in Gilman, Vermont, filed August 25, 2008.
2. Verified Prefiled Testimony of Steven Harmsen, filed August 25, 2008.
3. Prefiled Testimony of A. J. Goulding, together with Ampersand Exhibits A and B, filed August 25, 2008.
4. Letter from Geoffrey Commons, Special Counsel, Vermont Department of Public Service, filed October 28, 2008.
5. Letter from Kenneth C. Picton, Assistant General Counsel, Central Vermont Public Service Corporation, filed October 29, 2008.
6. FERC Order Approving Transfer of License, copy filed November 5, 2008.

II. FINDINGS

1. Dalton is a limited liability company organized under the laws of the State of Utah. Dalton holds a certificate of organization from the Vermont Secretary of State. Harmsen pf. at 3; Docket No. 6833, Order of 7/17/08, at 2.

2. Dalton owns, and currently holds a CPG to own and operate the Project, which is a 4,850 total kW hydroelectric generating facility located at the Gilman Dam in Gilman, Vermont. Harmsen pf. at 2; Docket No. 6833, CPG issued July 17, 2003, amended April 1, 2004, and

2. These contracts were approved by the Board. Docket No. 6933, Order of October 1, 2008.

October 1, 2008.

3. The Project works consist of the Gilman Dam, a reservoir of about 130 acres, a powerhouse containing four turbine generator units, and a short transmission line. Docket No. 6833, Order of 7/17/2003, at 3.

4. Dalton also is the owner of an adjacent paper mill, at which a steam generating facility is located. Neither the paper mill nor the steam generating facility is presently operating. Harmsen pf. at 3.

5. Ampersand is a Massachusetts limited liability company. Goulding pf. at 2, 3 and 5; Ampersand Exhibit B.

6. Ampersand has agreed to purchase the Project and the adjacent paper mill (including the steam generating facility) from Dalton. The terms of this transaction are set forth in a Purchase and Sale Agreement ("PSA") between Dalton and Ampersand. Ampersand Exhibit A.

7. Ampersand is one of several affiliate entities that are part of the Ampersand Energy Partners group of companies. Goulding pf. at 2-3; Ampersand Exhibit B.

8. Ampersand is controlled by Ampersand North American Hydro Fund II ("Fund II"), which, in turn, is controlled by Ampersand Energy Partners LLC ("Energy LLC"). Goulding pf. at 3; Ampersand Exhibit B.

9. Ampersand controls Hydro, Optimization and Biomass. Goulding pf. at 2, 3 and 5; Ampersand Exhibit B.

10. After acquiring the Project and the adjacent paper mill from Dalton, Ampersand plans to assign the hydro assets to Hydro. PSA, Second Amendment to Purchase and Sale Agreement at 1.³

3. The Second Amendment to the Purchase and Sale Agreement defines hydro assets as the "real, intellectual and personal property required to generate and transmit electrical power, as listed in (i) the FERC License, and shown within the property boundary for FERC Project Number 2392, including all related Agreements and Contracts and Licenses and Permits, (ii) the Certificate of Public Good dated July 17, 2003, as amended April 1, 2004, (iii) the Interconnection Agreement dated March 9, 2004, and the amended and restated Non-Levelized Energy sales and Purchase Agreement dated March 19, 2004 (as the same may be amended from time to time, the "Power Agreements") with CVPS, and (iv) Exhibit A attached hereto but specifically excluding the steam turbine facilities located on the adjacent paper mill, ... including Purchaser's [Ampersand] rights to enter into the Operating Agreement contemplated by Section 9.2.5 of the PSA." Ampersand Exhibit A, Second Amendment to Purchase and Sale Agreement, paragraph 1.a.

11. Ampersand plans to assign the non-hydro assets to Optimization, which will continue to hold land and non-generating assets at the paper mill. Optimization plans to convey the steam turbine facility to Biomass. Goulding pf. at 6.

12. Hydro expects to make investments to improve the output of the Project, including upgrading existing equipment, assuring compliance with applicable environmental laws and statutes, and replacing aged parts. Goulding pf. at 6.

13. Ampersand and its affiliates anticipate restarting the steam turbine facility as a biomass electricity generator. Goulding pf. at 6.

14. One of Ampersand's affiliate companies, Energy LLC, was established in January 2003 to pursue development, investment, ownership and operation of power generation assets, focusing on small-scale renewable energy projects, notably small hydroelectric facilities, generally less than 25 MW in size, and biomass facilities. Energy LLC currently has over \$50 million under management. Goulding pf. at 4.

15. Another of Ampersand's affiliate companies, Fund II, controls Ampersand Sebec Lake Hydro LLC ("ASLH"), the owner of FERC Project No. 7253, and Ampersand Hydro Development Co. ("DevCo"). ASLH acquired an 867 kW hydroelectric facility located in Maine in December 2007. DevCo is in the initial stages of licensing two greenfield hydroelectric facilities in Pennsylvania and West Virginia. Goulding pf. at 4.

16. Through majority-owned Ampersand California Biomass Fund I, Ampersand is completing the \$35 million restart of two 12.5 MW biomass facilities in California. One is currently operational, while the other is currently scheduled to be placed in service in August 2008. Goulding pf. at 3-4.

17. Ampersand is owned by private individual investors and staffed through a long-term services agreement with London Economics International LLC ("LEI"), a global economic and financial professional services firm, focusing on the energy and infrastructure industries. A.J. Goulding is a principal of and also serves as president of LEI. He has advised on the successful acquisition of several billion dollars' worth of power sector assets worldwide, worked with regulators to design power markets, and is a professor at Columbia University, where he teaches a course on power markets. Goulding pf. at 5.

18. Ampersand and its affiliates have developed strong working relationships with a network of small hydroelectric owners and operators who provide engineering and technical support to Ampersand. Goulding pf. at 5.

19. Powerhouse Systems, Inc. ("PHS") and its principal, Greg Cloutier, will serve as the site manager/operator for the Project's generating facilities. PHS has been active in the small hydropower industry for twenty-five years. PHS and the Ampersand companies have been working together on acquisition due diligence and plant operations since 2004. PHS principals are investors in both Ampersand funds, and PHS is the operator of ASLH. PHS has extensive experience in design, startup and operation of hydroelectric and wood-fired cogeneration plants. PHS has been engaged in hydroelectric projects around the east coast for capacity upgrades, operations and maintenance, and new plant economics and currently operates a range of hydroelectric equipment from a 300 kW unit upgrade to an 8 MW plant in Connecticut. PHS has also been responsible for the licensing of three hydroelectric sites and the FERC compliance work for sites. Goulding pf. at 7-8.

20. Ampersand intends to explore a range of economically sustainable alternatives with regard to the paper mill, provided that such activities are consistent with the optimization of electricity production activities at the site. Ampersand expects to take a proactive approach to working with local entrepreneurs interested in pursuing a range of businesses at the site. To date, Ampersand has been approached by individuals with interest in pursuing paper making, wood pallet construction, and wood pellet manufacturing. Goulding pf. at 8.

21. Ampersand anticipates restarting the steam generating facility that is located at the paper mill as a biomass electricity generator. Ampersand believes that the potential exists to economically generate at least 10 MW of renewable energy following modifications to facilities associated with the steam generating facility. This will provide additional jobs at the site and support additional jobs offsite in the supply of biomass fuel to the facility. Goulding pf. at 6.

22. Ampersand and its affiliates will make only wholesale sales of electricity pursuant to market-based rates approved by FERC under Part II of the Federal Power Act. Goulding pf. at 9.

23. Ampersand has arranged debt and equity financing sufficient to acquire the Project and paper mill assets, as well as provide for refurbishment and upgrades. The revenue stream from

power sales is expected to provide sufficient funds for the ongoing expenses of operating the generation facilities. Goulding pf. at 5.

24. Issuance of the requested CPG will advance operation and maintenance of a renewable energy resource, provide an opportunity for additional jobs in the area, and provide continued tax revenues to the State of Vermont and the local communities. Goulding pf. at 9-10.

25. Section 6.1 of the PSA provides that prior to closing on the purchase of the Project, Ampersand will be registered to conduct business in the States of Vermont and New Hampshire. Ampersand Exhibit A, at 9.

26. Dalton and CVPS have entered into an Interconnection Agreement and a Power Purchase Agreement, both of which have been approved by the Board. Docket No. 6833, Order of October 1, 2008.

27. Ampersand and Dalton intend to have the Interconnection Agreement and the Power Purchase Agreement between Dalton and CVPS assigned to Ampersand and/or its affiliates. Goulding pf. at 8-9.

28. CVPS supports the transfer of the Project to Ampersand and is agreeable to assignment of the Power Purchase Agreement and the Interconnection Agreement to Ampersand, subject to receipt of regulatory approvals. Letter of Kenneth C. Picton, Assistant General Counsel, Central Vermont Public Service Corporation, filed October 29, 2008; *see also* Harmsen pf. at 5, 6.

29. FERC has approved the transfer of the FERC license for the Project from Dalton to Ampersand. FERC Docket No. P-2392-024, Order issued October 30, 2008.

30. The Department has recommended that the Board approve the proposed transfer without investigation or hearing. Letter of Geoffrey Commons, Special Counsel, Vermont Department of Public Service, filed October 28, 2008.

III. DISCUSSION

_____ In this docket, Ampersand and its affiliates Hydro, Optimization, and Biomass seek a CPG so that they can own and operate, with *de minimis* regulation, FERC Hydroelectric Project 2392, a generating facility located at the Gilman Dam. Ampersand has represented that power

generated at this facility will be sold only at wholesale pursuant to market-based rates.⁴ FERC has approved transfer of the Project from Dalton to Ampersand.⁵ The Department has recommended that the proposed transfer be approved without investigation or hearing, and CVPS is amenable to having Ampersand become Dalton's assignee in the Interconnection and Power Purchase Agreements CVPS currently has with Dalton.⁶

The statutory standard for Board issuance of a CPG is whether the proposed ownership and operation of the business will promote the general good of the state.⁷ To that end, the Board has established a set of criteria to be used as guidelines when determining whether an entity should be granted a CPG. These criteria are:

1. Technical expertise;
2. Adequate service;
3. Facility maintenance;
4. Balance between customers and shareholders;
5. Financial stability;
6. Company's ability to obtain finance;
7. Business regulation; and
8. Relationship with customers.⁸

The Board has treated the above criteria as guidelines only, because 30 V.S.A. § 203 permits the Board and the Department to exercise their jurisdiction "so far as may be necessary to enable them to perform their duties and exercise the powers conferred upon them by law." Hence, the Board's regulatory authority over the Ampersand companies may be applied to reflect the limited activities Ampersand, Hydro, Optimization, and Biomass plan to undertake in Vermont, and the Board may issue a CPG that reflects those limited activities.⁹

4. Goulding pf. at 9.

5. FERC Docket No. P-2392-024, Order issued October 30, 2008.

6. Letter of Geoffrey Commons, Special Counsel, Vermont Department of Public Service, filed October 28, 2008; Letter of Kenneth C. Picton, Assistant General Counsel, Central Vermont Public Service Corporation, filed October 29, 2008.

7. 30 V.S.A. § 231(a).

8. *See Petition of New England Power Company*, Docket No. 6039, Order of June 29, 1998, at 17.

9. *Id.*

The evidence demonstrates that the Ampersand companies meet the criteria that are applicable to their circumstances. Ampersand and its affiliates have significant experience in the operation of hydroelectric and biomass projects, and there will be experienced staff on site at the Project.¹⁰ Ampersand has arranged debt and equity financing sufficient to acquire the Project assets, as well as provide for refurbishment and upgrades.¹¹ Relationships with customers and balance between customers and shareholders are inapposite considerations given Ampersand's circumstances as a company without retail customers.¹²

In this particular case, there appears to be minimal risk of harm to the public good should the Project cease operating because of weaknesses in Ampersand's financial stability. The evidence here shows that the project is small, and, as discussed above, Ampersand has no retail customers. Hence, Ampersand will not look to Vermont ratepayers to recover any of its costs. In light of these circumstances, we conclude that full, traditional utility-type regulation of Ampersand, Hydro, Optimization, and Biomass at the state level is unnecessary to enable the Board to perform its duties and powers conferred by Title 30.

Because extensive state regulation of the Ampersand companies is not needed under the circumstances applicable to its petition, we have determined that the CPG should contain the following requirements:

- (a) Any amendments of the Project license shall be filed with the Board and the Department;
- (b) Any FERC filings related to the Project, including but not limited to filings related to Ampersand's market-based rates, shall be filed with the Board and the Department;
- (c) Ampersand shall comply with the Vermont Dam Safety Act, 10 V.S.A. § 1081 *et seq.*, to the extent that such requirements are not inconsistent with requirements imposed by

10. Finding 19, above.

11. Finding 23, above.

12. Finding 22, above.

FERC in connection with its regulation of the Project;

- (d) Ampersand shall notify the Board and the Department within fourteen days of any changes in the ownership of entities involved in the operation of the Project under 30 V.S.A. § 231;
- (e) Any CPG issued in this docket may not be transferred without approval of the Board;
- (f) Any CPG issued in this docket shall not apply to the steam generation facilities located on the paper mill site, absent future approval by the Board; and
- (g) Any CPG issued in this docket shall not grant to Ampersand the right to engage in the sale or provision of electricity to the paper mill adjacent to the Project should that paper mill be owned or operated by an entity other than Ampersand, Hydro, Optimization or Biomass.

IV. CONCLUSION

Based on our review of the record in this docket, we conclude that transfer of the Project from Dalton to Ampersand and issuance of a CPG to Ampersand and its affiliates Hydro, Optimization, and Biomass is in the general good of the state. Issuance of the requested CPG will advance operation and maintenance of a renewable energy resource, provide an opportunity for additional jobs in the area, and provide continued tax revenues to the State of Vermont and the local communities.

Therefore, accompanying this Order, we issue a certificate of consent, pursuant to 30 V.S.A. § 109, for Dalton to sell the Project to Ampersand. Also accompanying this Order, we issue a CPG, pursuant to 30 V.S.A. § 231 to Ampersand, Hydro, Optimization, and Biomass, to own and operate the Project, and conditioned as specifically set forth above.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. Pursuant to 30 V.S.A. § 109, a certificate of consent shall be issued for Dalton Hydro, LLC ("Dalton") to transfer FERC Hydroelectric Project 2392 ("Project"), a generating facility located at the Gilman Dam, and the adjacent paper mill at which a steam generating facility is located, to Ampersand Gilman Energy, LLC.
2. Pursuant to 30 V.S.A. § 231, a certificate of public good that includes the conditions that we identified above shall be issued to Ampersand Gilman Energy, LLC ("Ampersand"), Ampersand Gilman Hydro LP ("Hydro"), Ampersand Gilman Biomass LLC ("Biomass") and Ampersand Gilman Site Optimization LLC ("Optimization") for ownership and operation of the Project.
3. This docket shall be closed.

Dated at Montpelier, Vermont, this 4th day of December, 2008.

<u>s/James Volz</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

FILED: December 4, 2008

ATTEST: s/Susan M. Hudson
Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.